
**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Commonwealth Edison Company)	
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)	
Petition for declaration of service currently)	Docket No. 02-0479
provided under Rate 6L to 3 MW and greater)	
customers as a competitive service pursuant to)	
Section 16-113 of the Public Utilities Act and)	
approval of related tariff amendments.)	
)	

**INITIAL BRIEF OF
TRIZEC PROPERTIES, INC.**

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^{*} NOTE: This Table of Contents includes only the sections and subsections from the Issues Outline for this case which are addressed in this Initial Brief of Trizec Properties, Inc.

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Now comes TRIZEC PROPERTIES, INC., by its attorneys GIORDANO & NEILAN, LTD., and hereby files its initial brief in this proceeding pursuant to Section 200.800 of the Rules of Practice of the Illinois Commerce Commission (“Commission” or “ICC”).

INTRODUCTION AND SUMMARY

Trizec Properties, Inc. (“Trizec”) is the owner and/or operator of the Sears Tower as well as the buildings at 10 S. Riverside Plaza, 120 S. Riverside Plaza, 2 N. LaSalle Street and 550 W. Washington Street in Chicago. (Trizec Exhibit 1.0 at 1, lines 8-10). Trizec’s buildings have an aggregate peak demand of over 40 MW within the Commonwealth Edison Company (“ComEd”) service territory. (Trizec Exhibit 1.0 at 1, lines 8-11). Trizec intervened and is

actively participating in this proceeding in keeping with the leadership role Trizec has taken in the development of the competitive electricity market in Illinois.

ComEd petitioned the Commission for the entry of a final order in this case pursuant to Section 16-113 of the Public Utilities Act (220 ILCS 5/16-113) declaring that its Rate 6L-Large General Service Tariff (“Rate 6L” or “6L”) is a competitive service for customers with peak demands of 3 megawatts (“MW”) or greater. In the alternative, ComEd asked the Commission to permit the 6L service to be competitive by operation of law within 120 days after ComEd’s July 18, 2002 petition filing under the procedure set forth in Section 16-113 of the Public Utilities Act (“Act”). (ComEd Petition For Competitive Service Declaration at 1). If ComEd’s petition goes into effect in the manner requested by ComEd, Rate 6L service would no longer be available as of the June 2003 billing period to customers over 3 MW who are not on Rate 6L at that time. (ComEd Exhibit 10 at 6, lines 99-101). On the other hand, those customers on Rate 6L as of the June 2003 billing period could continue to take 6L service up to the May 2006 billing period. (ComEd Petition at 3).

ComEd contends that it has met the statutory criteria for a competitive service declaration set out in Section 16-113(a) of the Act that reasonably equivalent substitute service to Rate 6L is reasonably available to the relevant customer segment at a comparable price from electricity suppliers unaffiliated with ComEd.¹ (220 ILCS 5/16-113(a)). While ComEd did show that 117 of the 373 over 3 MW customers in ComEd’s service territory had switched to suppliers unaffiliated with ComEd as of the June 2002 billing period (ComEd Exhibit 7, Att. PRC/DFK-4), review of the record shows that this fact alone is far from sufficient for ComEd to satisfy the 16-113(a) criteria. Just as importantly, the evidence establishes that there are issues with the

¹ ComEd also contends that it has also met the additional 16-113(a) criteria for a competitive declaration that ComEd has lost or there is a reasonable likelihood that it will lose business to electricity providers unaffiliated with ComEd.

competitive market in the ComEd service territory that must be addressed by ComEd at this time to assure that there will be a vibrant competitive market for over 3 MW customers. (Trizec Exhibit 1.0 at 5-6; MidAmerican Exhibit 1 at 7, lines 133-138.)

Trizec believes that ComEd has the maximum incentive now, while ComEd's petition to declare Rate 6L competitive for over 3 MW customers is pending, to take the steps necessary to facilitate a vital competitive market at all times for all over 3 MW customers. Therefore, Trizec's position is that ComEd must make the specific commitments necessary to address current problems in the competitive market set forth in the rebuttal testimony of Trizec witness Roger Turner before the Commission can consider allowing ComEd's petition to go into effect. (Trizec Exhibit 1.0 at 5-6). If ComEd makes these commitments, ComEd's petition should be allowed to take effect by operation of law. Otherwise, the Commission should deny ComEd's petition.

Perhaps the most critical commitment necessary from ComEd is to increase the amount of ComEd's Market Value Energy Charges ("MVECs"), which establish the energy charges in ComEd's Purchase Power Option-Market Index ("PPO-MI") tariff, by approximately 0.8 cents per kWh from the amount calculated by the current formula in ComEd's tariffs. (Trizec Exhibit 1.0 at 5, lines 10-12 to 6, lines 10-17) While 31% of ComEd's over 3 MW customers were purchasing electricity not supplied by ComEd or its affiliates as of June 2002, the record is clear that many of these customers would have been switched to ComEd PPO service if the retail suppliers and Exelon Generation had not entered into an agreement which provided a subsidy from Exelon Generation to the suppliers to prevent this occurrence. (NewEnergy Exhibit 1.0 at 13, line 13 to 14, line 2; ICC Exhibit 3.0 at 10, line 232 to 11, line 258; Trizec Exhibit 1.0 at 6, line 17 to 7, line 2; Tr. at 1029, lines 15-19; IIEC Exhibit 3.0 at 4, lines 17-18). Moreover, it is

uncontraverted in this record that suppliers were not making offers to supply electricity at prices which beat the PPO during the vast majority of the months since ComEd's PPO-MI tariff went into effect on May 1, 2000. (Trizec Exhibit 1.0 at 7, lines 3-5). The bottom line is that the Commission cannot allow ComEd to eliminate Rate 6L unless ComEd takes the necessary step of adding a 0.8¢ increment to its MVECs. Unless the MVEC is revised so that the PPO is no longer too low, electricity from alternative providers will not be reasonably available to over 3 MW customers because the alternative providers will resort to "reselling" ComEd's PPO because they will not be able to make a reasonable profit unless they are "subsidized" by Exelon Generation. (ICC Exhibit 3.0 at 10, line 232 to 11, line 258; IIEC Exhibit 3.0 at 2, line 10 to 3, line 3). At this point, ComEd only has proposed that the availability of the PPO be limited. (Tr. at 481, line 17 to 482, line 14). This is not a viable solution because it would further reduce the over 3 MW customer's options at the same time ComEd is asking for the elimination of Rate 6L. Clearly, the proper approach is to "fix" rather than "restrict" ComEd's PPO.

In addition to addressing the PPO issue, ComEd also must give all of its over 3 MW customers currently served by competitive suppliers under long-term contracts a one-time opportunity to return to rate 6L at the end of their contracts. (Trizec Exhibit 1.0 at 6, lines 4-6 and 10, lines 1-22; ICC Exhibit 3.0 at 34, line 783-35 line 790; NewEnergy Exhibit 1.0 at 21, lines 9-20). Moreover, ComEd must institute an option for over 3 MW customers who purchase electricity supplied by competitive suppliers to receive individually calculated multi-year CTCs that extend through the end of the competitive transition period (i.e., December 31, 2006). (MidAmerican Exhibit 1 at 6, lines 14-17; Tr. at 834, line 18 to 835, line 8; Trizec Exhibit 1.0 at 7, line 7 to 8, line 22).

The one-time opportunity to return to Rate 6L is necessary because large customers who entered into multi-year contracts should not lose the right to return to Rate 6L when they entered into long-term contracts with the understanding that they could return to the ComEd rate. (Trizec Exhibit 10 at 6, lines 4-6 and 10, lines 1-22; ICC Exhibit 3.0 at 34, lines 767-790; NewEnergy Exhibit 1.0 at 21). The option of fixed CTCs through the transition period is essential because customers must have a viable option of entering into long-term contracts with competitive suppliers that provide stability in their electricity costs, especially if Rate 6L is eliminated. (MidAmerican Exhibit 1 at 6, lines 14-17; Tr. at 834, line 18 to 835, line 8).

If ComEd commits to the steps of (a) “fixing” rather than “restricting” the PPO, (b) establishing an option for a fixed CTC through the transition period; and (c) giving all customers purchasing electricity supply provided by competitive suppliers a one-time option to return to Rate 6L at the expiration of their contracts, the Commission should allow ComEd’s petition to go into effect by operation of law. Otherwise, the Commission should reject ComEd’s petition for the reasons discussed infra in Trizec’s Initial Brief as well as the reasons set forth in the initial briefs of the Illinois Industrial Energy Consumers (“IIEC”) and the Chicago Area Customer Coalition (“CACC”).

I. OVERVIEW OF STATUTORY STANDARDS

A. Section 16-113.

The specific statutory standard that applies to ComEd's petition to declare its Rate 6L tariffed service to be a competitive service for over 3 MW customers is set out in subsection 16-113(a) of the Act (220 ILCS 16-113(a)), as follows:

The Commission shall declare the service to be a competitive service for some identifiable customer segment or group of customers ... if the service or a reasonably equivalent substitute service is reasonably available to the customer segment or group ... at a comparable price from one or more providers other than the electric utility or an affiliate of the electric utility, and the electric utility has lost or there is a reasonable likelihood that the electric utility will lose business for the service to the other provider or providers.²

Although the statutory standard is stated specifically, it is not yet established how this standard should be applied because this is the first time that the Commission is addressing a petition by an electric utility to declare a service competitive. Nevertheless, according to Section 16-113(a) the Commission must make a finding on whether the service is competitive based on the Section 16-113(a) standard within 120 days of ComEd's filing or otherwise the petition shall have been deemed to have been granted by operation of law. (220 ILCS 5/16-113(a)).

If the Commission does not make its determination within 120 days and the petition is deemed granted by operation of law, according to specific language in Section 16-113(a) the Commission is not precluded from finding, in a subsequent proceeding initiated by the Commission, that the service is not competitive based on the 16-113(a) statutory criteria. (220 ILCS 16-113(a)). As a result of this provision of Section 16-113(a), it is likely that if the Commission finds that 6L service to over 3 MW customers is competitive in the instant case that ComEd would oppose the Commission's initiation of a subsequent proceeding to determine whether such service was competitive based on the Section 16-113(a) criteria.

² Section 16-113(a) also provides that the Commission shall consider, in applying the above criteria, whether there is adequate transmission capacity into the service area of the petitioning electric utility to make electric power and energy reasonably available to the customer segment or group from one or more providers other than the electric utility or an affiliate of the electric utility. (220 ILCS 16-113(a)).

Since a Commission finding that 6L service to over 3 MW customers is competitive could result in the Commission being unable to reverse this decision regardless of the situation, it is critical that the Commission not issue an order approving ComEd's petition. Clearly, the only two feasible options for the Commission in this case are to deny the petition or to allow the petition to go into effect by operation of law. As is further discussed both supra and infra, the Commission should only allow the petition to go into effect by operation of law if ComEd makes the specific, essential commitments to facilitate a competitive market for over 3 MW customers that are set forth on pages 5-6 of the rebuttal testimony of Trizec witness Roger Turner. (Trizec Exhibit 1.0 at 5-6). Otherwise, the Commission should flatly deny the petition.

II. EVIDENCE RELATING TO SECTION 16-113

Trizec's initial brief will attempt to aid the Commission with respect to the following key issues in this case: (a) Is reasonably equivalent substitute service to Rate 6L reasonably available to over 3 MW customers; and (b) Is the substitute service reasonably available to over 3 MW customers at a comparable price to charges under Rate 6L.

B. Reasonably equivalent substitute service that is reasonably available

ComEd witnesses Paul Crumrine and Dennis Kelter are asked the critical question in this case at page 5 of their direct panel testimony, that is: "Are services reasonably equivalent to those provided under Rate 6L reasonably available to customers in the 3 MW or greater group at comparable prices from one or more providers not affiliated with ComEd?" (ComEd Exhibit 7 at

5, lines 72-74). The sole basis mentioned by Messrs. Crumrine and Kelter in support of their “yes” answer to this question is that “large numbers of customers in the 3 MW or greater segment are taking those services from non-affiliated alternative suppliers now.” (ComEd Exhibit 7 at 5, lines 76-77). When this statement is examined based on the record in this case, it is an insufficient basis for the ComEd witnesses “yes” answer to the essential question in this proceeding.

The factual basis for the aforementioned statement of Messrs. Crumrine and Kelter is set out in Attachment PRC/DFK-4 to their direct panel testimony. This attachment shows that 31% (i.e., 117 out of 373) of over 3 MW Rate 6L eligible customers were purchasing electricity supply from suppliers unaffiliated with ComEd as of the June 2002 monthly billing period. (ComEd Exhibit 7, att. PRC/DFK-4) Although this fact must be taken as true based on the record in this case, the record also indicates that it would not be true if there had not been voluntary action taken by Exelon Generation (ICC Exhibit 3.0 at 10 lines 240 to 258) which “subsidized” the suppliers. (ICC Exhibit 3.0 at 10, lines 240-258; Trizec Exhibit 1.0 at 6, line 17 to 7, line 5). Dr. Phil O’Connor of the Retail Electric Supplier (“RES”) NewEnergy testified that this action was taken “[i]n recognition of the likelihood of a substantial ‘flowback’ of customers [to the PPO] due to the flawed MVEC (“Market Value Energy Charge”) calculation.” (NewEnergy Exhibit 1 at 13, lines 15-16). Significantly, unlike an increase in ComEd’s MVECs which reduces ComEd’s CTCs because they are inversely linked, the subsidy from Exelon Generation did not reduce ComEd’s CTCs and therefore did not benefit the customers of the competitive supplier unless the discount was voluntarily passed through to the customer by the supplier.

The necessity for this action by Exelon Generation to prevent the PPO from being “the only game in town” (NewEnergy Exhibit 1.0 at 13, line 2) shows that the retail competitive market in Illinois is still not operating in a manner which assures that a reasonably equivalent substitute service to Rate 6L from providers unaffiliated with ComEd is available to over 3 MW customers. In fact, according to the unchallenged testimony of Trizec witness Roger Turner, no offers could be obtained from competitive suppliers which beat the PPO during the vast majority of the months since ComEd’s PPO-MI tariff went into effect on May 1, 2000. (Trizec Exhibit 1.0 at 7, lines 3-5). In other words, there has generally been no reasonably equivalent substitute service reasonably available to over 3 MW customers from unaffiliated providers since May 1, 2000. This includes ComEd’s current Applicable Period B, which began in the September billing period and extends through May 2003. The only exceptions have been periods affected by the Exelon Generation subsidy cited earlier, a similar action by ComEd (when ComEd still owned power plants and made wholesale sales to RESS) in 2000 and a substantial drop in market prices right after ComEd’s MVECs were set for ComEd’s Applicable Period A in 2001. (Trizec Exhibit 1.0 at 6, line 17 to 7, line 2; Tr. at 369, line 13 to 370, line 9).

For the reasons stated above and the reasons stated in the initial briefs of IIEC and CACC, the Commission cannot make a finding that reasonably substitute service is reasonably available to over 3 MW customers based on the record in this case. As Commission Staff witness Howard Haas testified, “no service should be declared competitive as long as the incumbent utility’s affiliates need to periodically provide subsidies or assistance to RESs.” (ICC Exhibit 3.0 at 32, lines 739-741)

Clearly, ComEd must take action to eliminate the need for subsidies from Exelon Generation prior to its pending petition going into effect. Specifically, as recommended by

Trizec witness Roger Turner in his rebuttal testimony, ComEd should increase the amount of its MVECs (which establish the energy charges in ComEd's PPO-MI tariff) by 0.8¢ from the amount calculated by the formula calculated by the current formula in ComEd's tariffs. Mr. Turner based his recommended 0.8 cents increment on his experience with the energy consulting firm GEV Corp. analyzing competitive electric savings opportunities for more than a thousand accounts in the ComEd service territory using a proprietary computer model which he developed. (Trizec Exhibit 1.0 at 6, line 10 to 7, line 3). An 0.8 cents increase was necessary according to Mr. Turner in part because after the 0.5 cents subsidy put in place by Exelon Generation (in 2000) and ComEd (in 2002) "some customers were able to attract offers from suppliers which beat the PPO by slight margins while other customers were still unable to attract any offers that beat the PPO." (Trizec Exhibit 1.0 at 7 lines 1-2). If and only if ComEd takes the step of adding a 0.8 cents increment to its PPO can we have any assurance that supply from unaffiliated suppliers, and not merely ComEd PPO service, is reasonably available to over 3 MW customers as is required by the Act. Otherwise, the Commission must not let ComEd's petition go into effect under any circumstances.

C. Comparable Price

ComEd did not provide any specific evidence in its direct case regarding the pricing of substitute service for Rate 6L. Instead, ComEd relied on its evidence of the number of customers that have switched as support for the premise that reasonably equivalent service is reasonably available at comparable prices. (ComEd Exhibit 7 at 5, lines 77-80). As discussed supra, the switching statistics are insufficient to establish that comparably priced substitute service is reasonably available because suppliers have been unable to beat the PPO without assistance or unusual market conditions. (ICC Exhibit 3 at 10-11; Trizec Exhibit 1 at 6-7). ComEd attempted

to cover its failure to prove that it met the “comparable price” criteria in its direct case by presenting rebuttal panel testimony of witnesses Crumrine and Kelter which attempted to compare the cost of service under rate 6L with competitive alternatives. (ComEd Exhibit 8, at 12-13, lines 231-260). The problem with this testimony is that it is fraught with too many assumptions to be reliable. Specifically, ComEd’s analysis of charges under Rate 6L versus competitive supply for the June 2003-May 2005 is based on assumed MVECs and CTCs for this period. (ComEd Exhibit 8 at 12-13, lines 231-260).

The record clearly shows that ComEd’s MVECs and CTCs are extremely volatile. (NewEnergy Exhibit 1 at 13, lines 8-12; Trizec Exhibit 1 at 8, lines 8-13) On the other hand, if ComEd would take the necessary step of giving customers buying from Retail Electric Suppliers (“RESs”) an option to fix their CTCs through the transition period, customers could purchase electricity from RESs at the low prices currently available in the market and assure that they had superior prices to Rate 6L through the end of the transition period. (Trizec Exhibit 1 at 7, line 7 to 8, line 2). Therefore, the best way to assure that substitute service is available at comparable prices is for ComEd to commit to providing an option for its over 3 MW customers to fix their CTCs through the end of the transition period.

III. PROPOSED AMENDMENTS

B. Extension of return option for customers not on rate

If ComEd’s petition goes into effect in the manner proposed by ComEd, those customers on ComEd’s delivery services as of the June 2003 billing period would not have the option of returning to Rate 6L. (ComEd Petition at 10). Consequently, ComEd delivery services customers who have entered into long-term contracts for electricity supplied by RESs would never have the opportunity to determine whether they should go back on Rate 6L. (NewEnergy

Exhibit 1 at 21, lines 9-20). This is unfair because customers who led the way in the purchase of competitive electricity should not lose their right to return to Rate 6L when they entered into long-term contracts with the understanding that they could later return to Rate 6L. (Trizec Exhibit 1.0 at 9, line 12 to 10, line 22).

As Dr. O'Connor of New Energy testified, ComEd's proposal would place those customers who entered into multi-year contracts with RESs prior to ComEd's proposal "in a position of not being able to exercise the basic choice implied by ComEd's competitive declaration proposal-between staying on or going back to 6L." (NewEnergy Exhibit 1 at 21, lines 14-16). Trizec's witness Roger Turner recommended that those customers with competitive supply contracts expiring on or after the June 2003 should have a one-time opportunity to return to Rate 6L at the time of expiration of the contract. (Trizec Exhibit 1.0 at 6, lines 4-6). These customers should be required to make a declaration to ComEd that they were receiving electricity under a competitive supply contract on or before July 18, 2002 (i.e., the date ComEd made its filing in the case) and specify the billing month in which the supply contract expires. (Trizec Exhibit 1.0 at 10, lines 1-5). On or before the expiration of the supply contract, the customer can determine its competitive supply options and inform ComEd that it has chosen to either continue delivery services or take advantage of a one-time opportunity to return to Rate 6L. (Trizec Exhibit 1.0 at 10, lines 6-11). Commission Staff, New Energy and DOE also recommended that all customers under long-term supply contracts be given a one-time opportunity to return to Rate 6L at the expiration of the contract. (ICC Exhibit 3, lines 783-790; NewEnergy Exhibit 1 at 21, lines 16-18; DOE Exhibit 1 at 21, lines 480-83).

In the rebuttal testimony of Arlene Juracek, ComEd indicates that if customers are given the option to give ComEd notice that they are returning to Rate 6L at the expiration of the

contract, the customer should be given the option to revoke the notice if the customer changes its mind and wants to continue purchasing competitive supply. (ComEd Exhibit 8, lines 144-49). Trizec agrees. On redirect examination at the hearing held on September 16, 2000, however, Ms. Juracek testified that the customer should pay for the option to revoke the notice. (Tr. at 904, lines 4-14). Trizec disagrees because notice at any time prior to the expiration of the contract should merely be a preliminary notice to ComEd which informs ComEd of the expiration dates of long-term supply contracts so that ComEd can know the extent of its potential exposure to customers returning to 6L. (Trizec Exhibit 1.0 at 11, lines 1-15). Clearly, customers currently being served under long-term competitive supply contracts should have the right to make their decision on whether to return to 6L or continue under its current contract at the time the contract expires (without having to pay ComEd for that option) because the customer entered into its competitive supply contract with the understanding that it could return to Rate 6L without any additional charges when the RES contract expired.

V. OTHER

A. Allowing ComEd's Petition To Go Into Effect By Operation Of Law.

Dr. Philip O'Connor of New Energy took the position in his testimony that ComEd's petition should go into effect by operation of law in order to put significant pressure on ComEd and market participants to address issues which are affecting negatively the competitive supply market such as "the deep flaws in the MVI tariff calculation" (NewEnergy Exhibit 1 at 7, lines 8-

18) which result in an under priced ComEd PPO against which suppliers cannot compete consistently. (NewEnergy Exhibit 1 at 13, lines 1-4). Trizec considers this approach “putting the cart before the horse” (Trizec Exhibit 1 at 2, line 20) because Trizec believes that ComEd and the market participants must address these issues before ComEd’s petition is allowed to go into effect by operation of law. (Trizec Exhibit 1 at 3, line 21-23).

The reality is that there have been Commission workshops and other proceedings almost continuously since October 1, 1999 which have not resulted in ComEd MVECs that have assured consistent competition against the PPO. Moreover, the record in this proceeding shows that the proceeding regarding ComEd’s MVECs which is scheduled to start with a required filing by ComEd on Oct. 1 is an 11-month proceeding according to ComEd’s own witness William McNeil (Tr. at 487, line 19 to 488, line 8) and therefore is not likely to be completed prior to the May 2003 date that ComEd has proposed as the last date that a customer can return to Rate 6L. This is clearly an untenable situation because it means that there is a likelihood that there will not be effective RES supply against the PPO at the time the option to return to 6L is eliminated unless the RESs are again propped up by Exelon Generation subsidies. (IIEC Exhibit 3.0, lines 232-258).

There are two ways to avoid this extremely undesirable situation. One way is for the Commission to deny ComEd’s petition. The other way is for the Commission to allow ComEd’s petition to go into effect by operation of law if it makes the following specific, essential commitments to facilitate a competitive market for over 3 MW customers which are set forth on pages 5-6 of Trizec witness Roger Turner’s rebuttal testimony and discussed throughout this initial brief of Trizec:

1. ComEd must increase the amount of its Market Value Energy Charges (“MVECs”) by approximately .8 cents per kWh from the amount calculated by the current formula ComEd’s tariffs.
2. Customers in the 3 MW and greater customer group must have the option of receiving individually calculated, multi-year CTCs from ComEd that extend through the end of the transition period (i.e., December 31, 2006). These individually calculated, multi-year CTCs must be available to all 3 MW and greater customers at any time beginning with the June 2003 billing period.
3. In the event that ComEd’s transmission or delivery service rates are adjusted during the transition period, ComEd’s multi-year CTCs must be adjusted in the manner provided in Section 16-102 of the Public Utilities Act.
4. All ComEd customers that had competitive electricity contracts in place on July 18, 2002 that expire in or after the June 2003 billing period must have a one-time opportunity to elect ComEd’s 6L rate at the time of expiration of their contract.
5. ComEd’s customers must continue to be allowed to sign up for ComEd’s PPO tariff during any month of the year.

Unless ComEd makes all of the commitments described above in both its Reply Brief in this proceeding and its MVEC filing with the Commission which are both due on October 1, the Commission should deny ComEd’s petition. On the other hand, if ComEd does make these commitments the Commission should allow ComEd’s petition to go into

effect by operation of law but should carefully monitor the further development of competitive choice for Rate 6L customers in the 3 MW and greater customer segment. (NewEnergy Exhibit 1.0 at 19, line 20 to 20, line 7). Additionally, the Commission should put ComEd on notice that the Commission will initiate a proceeding to determine whether service to over 3 MW customers is competitive if there is a 10% backslide in flowed power from RESs to over 3 MW customers. (NewEnergy Exhibit 1.0 at 20, lines 7-11). This approach will give customers assurance that the Commission will address the problem if non-MVEC and non-CTC issues result in a future situation in which RES power is not reasonably available to over 3 MW customers in the ComEd service territory.

CONCLUSION

WHEREFORE, for the above-stated reasons TRIZEC PROPERTIES, INC. requests that the Commission:

- (a) allow ComEd's petition to declare the provision of electric power and energy to customers 3 MW or greater a competitive service to go into effect by operation of law on November 15, 2002 if ComEd makes the specific, essential commitments to facilitate a competitive market described in Trizec's Initial Brief in ComEd's Reply Brief in this proceeding and its October 1 MVEC filing;
- (b) in the alternative, if ComEd refuses to make the specific, essential commitments to which Trizec has referred in this initial brief, issue a final

order on or before November 15, 2002 refusing to declare Rate 6L service to over 3 MW customers to be a competitive service.

Respectfully submitted,

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